

SENATE BILL 1100

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EMERGENCY BILL

2lr3460

By: **Senators Montgomery, Garagiola, Frosh, Madaleno, and Raskin**
Constitutional Requirements Complied with for Introduction in the last 35 Days of
Session
Introduced and read first time: March 20, 2012
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Real Property – Enforceability of Recorded Covenants**
3 **and Restrictions – Agricultural Activities and Structures**

4 FOR the purpose of authorizing a certain person to bring an action in a court of
5 competent jurisdiction to challenge certain provisions of certain recorded
6 covenants and restrictions as unenforceable to a certain extent under certain
7 circumstances; providing for a certain rebuttable presumption; providing that
8 Montgomery County shall have standing to intervene in a certain case;
9 providing for the construction and application of this Act; making this Act an
10 emergency measure; and generally relating to the enforceability of certain
11 recorded covenants and restrictions in Montgomery County.

12 BY adding to
13 Article – Real Property
14 Section 14–133
15 Annotated Code of Maryland
16 (2010 Replacement Volume and 2011 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Real Property**

20 **14–133.**

21 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
22 **MEANINGS INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) “AGRICULTURAL ACTIVITY” MEANS AN ACTIVITY INCLUDED**
2 **IN THE DEFINITION OF “AGRICULTURE” OR “FARMING” IN THE LOCAL ZONING**
3 **CODE.**

4 **(3) “AGRICULTURAL PROPERTY” MEANS PROPERTY LOCATED IN**
5 **MONTGOMERY COUNTY THAT IS ENCUMBERED BY A RECORDED TRANSFER OF A**
6 **DEVELOPMENT RIGHTS EASEMENT ESTABLISHED IN ACCORDANCE WITH A**
7 **PROGRAM FOR THE TRANSFER OF DEVELOPMENT RIGHTS UNDER ARTICLE 28, §**
8 **8-101(B)(3) OF THE CODE.**

9 **(4) “AGRICULTURAL STRUCTURE” MEANS A STRUCTURE, AS**
10 **DEFINED IN THE LOCAL ZONING CODE, THAT IS USED FOR AN AGRICULTURAL**
11 **ACTIVITY.**

12 **(5) “EXISTING USE” MEANS ANY LAWFUL AGRICULTURAL**
13 **ACTIVITY OR AGRICULTURAL STRUCTURE ON AGRICULTURAL PROPERTY.**

14 **(6) “RECORDED COVENANTS AND RESTRICTIONS” MEANS ANY**
15 **INSTRUMENT OF WRITING THAT IS RECORDED IN THE LAND RECORDS OF**
16 **MONTGOMERY COUNTY AND THAT GOVERNS OR LEGALLY RESTRICTS THE USE**
17 **OF REAL PROPERTY.**

18 **(B) (1) THIS SECTION APPLIES ONLY IN MONTGOMERY COUNTY.**

19 **(2) THIS SECTION DOES NOT APPLY TO COVENANTS,**
20 **RESTRICTIONS, CONDITIONS, OR CONSERVATION EASEMENTS FOR THE BENEFIT**
21 **OF OR HELD BY ANY STATE OR LOCAL GOVERNMENTAL AGENCY OR PROGRAM,**
22 **OR HELD BY A QUALIFIED PRIVATE LAND TRUST, FOR THE PURPOSE OF**
23 **CONSERVING NATURAL RESOURCES OR AGRICULTURAL LAND PURSUANT TO §**
24 **2-118 OF THIS ARTICLE, INCLUDING:**

25 **(I) THE MARYLAND ENVIRONMENTAL TRUST;**

26 **(II) THE MARYLAND DEPARTMENT OF NATURAL**
27 **RESOURCES;**

28 **(III) THE MARYLAND AGRICULTURAL LAND PRESERVATION**
29 **FOUNDATION; AND**

30 **(IV) FOREST CONSERVATION PROGRAMS IMPLEMENTED**
31 **THROUGH THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING**
32 **COMMISSION.**

1 **(C) (1) A PERSON THAT HAS STANDING MAY BRING AN ACTION IN A**
2 **COURT OF COMPETENT JURISDICTION TO CHALLENGE ANY PROVISION OF**
3 **RECORDED COVENANTS AND RESTRICTIONS THAT PROHIBITS OR RESTRICTS**
4 **AGRICULTURAL ACTIVITY OR THE CONSTRUCTION OF AN AGRICULTURAL**
5 **STRUCTURE ON AGRICULTURAL PROPERTY AS UNENFORCEABLE TO THE**
6 **EXTENT THAT THE PROVISION IS INCONSISTENT WITH THE CLASSIFICATION OF**
7 **AGRICULTURAL PROPERTY AND CONTRARY TO PUBLIC POLICY.**

8 **(2) A PERSON THAT HAS STANDING MAY BRING AN ACTION IN A**
9 **COURT OF COMPETENT JURISDICTION TO CHALLENGE ANY PROVISION OF**
10 **RECORDED COVENANTS AND RESTRICTIONS THAT PROHIBITS OR RESTRICTS**
11 **COMMERCIAL OR BUSINESS ACTIVITY AS UNENFORCEABLE TO THE EXTENT**
12 **THAT THE PROVISION:**

13 **(I) HAS THE EFFECT OF PROHIBITING OR RESTRICTING**
14 **THE ESTABLISHMENT AND OPERATION OF AGRICULTURAL ACTIVITY ON**
15 **AGRICULTURAL PROPERTY;**

16 **(II) IS INCONSISTENT WITH THE CLASSIFICATION OF**
17 **AGRICULTURAL PROPERTY; AND**

18 **(III) IS CONTRARY TO PUBLIC POLICY.**

19 **(3) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT**
20 **RECORDED COVENANTS AND RESTRICTIONS THAT LIMIT AN EXISTING USE ARE:**

21 **(I) INCONSISTENT WITH THE CLASSIFICATION AS**
22 **AGRICULTURAL PROPERTY; AND**

23 **(II) CONTRARY TO PUBLIC POLICY.**

24 **(4) MONTGOMERY COUNTY SHALL HAVE STANDING TO**
25 **INTERVENE IN A CASE WHERE A PROVISION OF RECORDED COVENANTS AND**
26 **RESTRICTIONS IS CHALLENGED UNDER THIS SECTION.**

27 **(D) THIS SECTION MAY NOT BE CONSTRUED TO RENDER LOCAL ZONING**
28 **REGULATIONS UNENFORCEABLE.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
30 construed to apply retroactively and shall be applied to and interpreted to affect any
31 recorded covenants and restrictions whether recorded before or after the effective date
32 of this Act.

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1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
2 measure, is necessary for the immediate preservation of the public health or safety,
3 has been passed by a yea and nay vote supported by three-fifths of all the members
4 elected to each of the two Houses of the General Assembly, and shall take effect from
5 the date it is enacted.